



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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IN THE MATTER OF CLAIM AGAINST THE  
DEALER BOND OF DAVIS AUTO SALES  
(DUWAYNE D. DAVIS, D.B.A.)

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Case No. TR-01-0026

**FINAL DECISION**

Mr. Shawn Shadrick filed a claim on or about September 29, 2000, with the Wisconsin Department of Transportation (the "Department") against the motor vehicle dealer bond of Davis Auto Sales (Duwayne D. Davis, d.b.a.). On May 24, 2001, the claim, along with the documents gathered by the Department in its investigation, was referred to the Division of Hearings and Appeals for hearing. The undersigned gave the parties until July 6, 2001, to file any additional information they wished to have considered in issuing a preliminary determination in the matter. The Dealer submitted a letter dated June 4, 2001 to the Department, along with enclosures, which was forwarded to the undersigned. Mr. Shadrick did not submit additional information.

On August 7, 2001, the undersigned issued a Preliminary Determination and informed the parties by letter addressed as shown below that if no timely objection to the Preliminary Determination were received by September 6, 2001, then the Preliminary Determination would be subject to adoption as the Final Decision in the matter. The undersigned has not received any objections to the Preliminary Determination. Accordingly, the Preliminary Determination is adopted, with slight modifications as to form, as the final decision of the Department of Transportation pursuant to Wis. Adm. Code § Trans 140.26(5)(d).

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the parties to this proceeding are certified as follows:

Shawn L. Shadrick  
208 E. 4<sup>th</sup> Street  
Granton, Wisconsin 54436

Capitol Indemnity Corporation  
P.O. Box 5900  
Madison, Wisconsin 53705-0900

Davis Auto Sales  
Duwayne D. Davis, d.b.a.  
912 N. Central Avenue  
Marshfield, Wisconsin 54449

## **FINDINGS OF FACT**

1. Davis Auto Sales, Duwayne D. Davis, d.b.a., (the "Dealer") is a motor vehicle dealer licensed by the Department pursuant to Wis. Stat. § 218.0111 (1999-2000). The Dealer's facilities are located at 912 N. Central in Marshfield, Wisconsin.
2. The Dealer has had surety bond number LP00575545, issued by Capitol Indemnity Corporation, continuously in force since January 1, 1993. A separate bond is renewed annually for calendar year periods, with a separate face amount of the bond applying each calendar year.
3. On June 9, 1999, the Dealer sold Shadrick a 1997 Chevrolet Silverado 2500 truck, VIN 1GCGK29R0VE193248 (the "Vehicle"), at the retail price of \$20,995.00, plus taxes and fees. The mileage on the Vehicle at the time of sale was 57,421 miles.
4. The Vehicle had a "title brand" of having been previously transferred to an insurer upon payment of a claim. (This type of title brand denotes that the Vehicle had been damaged between 30% and 70% of its fair market value and after payment of a claim had been transferred to an insurance company.) This title brand was plainly marked on a title in the possession of the Dealer. The Dealer, in the exercise of reasonable care, knew or should have known of the title brand before the sale.
5. The Dealer prepared and displayed a Wisconsin Buyers Guide for the Vehicle. In the "Title Brands" section of the Buyers Guide, the Dealer did not mark the box for "Transferred to insurance co. – damage claim paid". This box should have been marked.
6. Because of the Dealer's failure to indicate this title brand on the Buyers Guide, Shadrick was unaware of this material history of the Vehicle at the time he decided to purchase the Vehicle at the agreed price.
7. A certificate of title was issued to Shadrick on July 14, 1999, and it duly reflected the title brand. Shadrick noticed the title brand when he received the certificate, but he did not question it, did not report it to the Dealer, or otherwise complain to the Dealer about it.
8. After acquiring the Vehicle, Shadrick installed after-market oversize tires and offset wheels.
9. On September 29, 1999, Shadrick had repairs done to the Vehicle that included replacing the idler arm bracket and installing a new left lower ball joint. The mileage on the Vehicle at this time is not reflected in the information provided. Shadrick never registered a complaint with the Dealer regarding this repair.
10. On November 19, 1999, Shadrick had the "steering sector" replaced at a cost of \$297.88. The mileage on the Vehicle at the time was 75,044 miles. Shadrick never registered a complaint with the Dealer regarding this repair.
11. On or about March 21, 2000, Shadrick sold the Vehicle to a private party for \$14,000.00. The mileage on the Vehicle was 87,773.
12. Shadrick placed over 30,000 miles on the Vehicle in the approximately nine months that he owned it, thus averaging over 3,000 miles per month.

13. On June 8, 2000, Shadrick filed a dealer complaint stating that if he had known the Vehicle had been title branded he would not have purchased it. He complained that the ball joints and idler arm required repair soon after the purchase and that a “good settlement is \$1,500 because I should never had the problems on a newer truck like that.” In his dealer complaint he noted that he had not reported a problem to the Dealer and indicated that he did not wish the Department to send a copy of his written complaint to the Dealer.

14. On September 29, 2000, Shadrick filed a claim against the motor vehicle dealer bond of the Dealer. He claimed damages of \$450 for repair work on the front end, ball joints, tie rod and steering column. He also claimed damages of \$4,000, representing a loss he claimed he sustained when he sold the Vehicle. Shadrick thereby suggested that if the Vehicle had not been title branded he could have sold it for \$4,000 more, but he had not yet informed the Department of the price he had sold it for, which had been \$14,000.

15. On or about March 21, 2001, Shadrick provided additional information to the Department in which he falsely stated that he had sold the Vehicle for \$12,000 with mileage of 83,000 miles.

16. There is insufficient evidence to establish that the repairs claimed by Shadrick in the amount of \$450 were related to the title brand and were not caused by normal wear and tear. Accordingly, Shadrick has not established that the failure to disclose the title brand resulted in an actual loss of having to make the repairs.

17. The actual loss that Shadrick suffered as a result of the failure to disclose the title branding would be Shadrick’s purchase price less the true retail fair market value of the Vehicle at the time of his purchase. There is insufficient information presented to establish that there was any such difference. Accordingly, Shadrick has not established that he suffered an actual loss as a consequence of the failure to disclose the title brand.

18. Shadrick’s claim arose on June 9, 1999, the day he purchased the Vehicle. The bond claim was filed within three years of the December 31, 1999, which was the ending date of the one-year period of the bond that was in effect at the time the claim arose.

19. Shadrick has not established that he suffered an actual loss as a result of an act of the Dealer that would be grounds for revocation or suspension of its motor vehicle dealer license.

## **DISCUSSION**

The procedure for determining claims against dealer bonds is set forth in the Wisconsin Administrative Code at Chapter Trans 140, Subchapter II. Section Trans 140.21(1) provides in relevant part as follows:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01(3)(a)1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)]*.

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(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow a claim, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed.

By failing to disclose the title brand for the Vehicle on the Wisconsin Buyers Guide, the Dealer violated Wis. Admin. Code § Trans 139.04(6)(a)1, which provides in part as follows:

**(6) WISCONSIN BUYERS GUIDE.** (a) Except as provided in par. (c), each used motor vehicle displayed or offered for sale by a dealer shall display a guide as prescribed by the department. ...The copy shall be displayed within the vehicle, attached to a window except where not possible, and shall be readable from the outside, or attached to motor driven cycles, and it shall become the possession of the purchaser upon delivery.... The guide shall clearly state in simple and concise language:

1. That the vehicle is used. All material history, prior use and title brands shall be clearly and specifically disclosed, for example, ... transferred to insurer upon payment of claim. All title brands that appear on the existing certificate of title for the vehicle or that will appear on the new certificate of title for the vehicle as required by s. 342.10, Stats., shall be disclosed. ... Required disclosure of ... title brands is limited to that which the dealer could find using reasonable care.

This violation of § Trans 139.04(6)(a)1 constitutes a violation of Wis. Stat. § 218.0116(1)(gm), which provides that a motor vehicle dealer license may be revoked or suspended for failure to comply with any law relating to the sale of a motor vehicle. A violation of Wis. Stat. § 218.0116(1)(gm) will support a claim against a dealer bond pursuant to Wis. Admin. Code § Trans 140.21(1)(c)1, if it is established that the violation resulted in an actual loss.

There is insufficient evidence that the repairs to the idler arm, ball joints, front end, tie rod, and steering column, in the claimed amount of \$450 were related to the title branding rather than caused by normal wear and tear. In this regard, it is significant that some of these repairs were completed more than five months after the purchase, and after Shadrick had driven the Vehicle over 17,000 miles.

Similarly, there is insufficient evidence that the price Shadrick paid did not fairly represent the Vehicle's retail fair market value. The only information presented in this regard is Shadrick's representation that another dealer, whom he has not identified, informed him that the Vehicle should have been sold for \$6,000 less than what he paid for it. This hearsay information is insufficiently reliable to support a finding thereon. Accordingly, I find that Shadrick has not established that he suffered an actual loss as a result of the violation. Without a finding that the violation resulted in an actual loss, there can be no recovery under the bond. Wis. Adm. Code § Trans 140.21(1). Shadrick chose not to object to the Preliminary Determination in this matter and thus did not avail himself of the opportunity to present additional evidence in an effort to meet his burden of proof on whether he suffered an actual loss as a result of the violation.

### **CONCLUSIONS OF LAW**

1. The claim of Shawn Shadrick arose on June 9, 1999, the date the Vehicle was purchased from the Dealer. The surety bond issued to the Dealer by Capitol Indemnity Corporation was in effect at this time. The claim arose during the period covered by the surety bond.
2. Shadrick filed a claim against the motor vehicle dealer bond of the Dealer on or about September 29, 2000. The bond claim was filed within three years of the last day of the period covered by the surety bond. The claim is timely filed pursuant to Wis. Adm. Code § Trans 140.21(1)(d).
3. The Dealer's act or omission of failing to disclose the title brand on the Wisconsin Buyers Guide would be grounds for suspension or revocation of its motor vehicle dealer license under Wis. Adm. Code § Trans 140.21(1)(c). Shadrick has not met his burden of proof to establish that any such difference existed. Accordingly, Shadrick has failed to present sufficient evidence to support his claim, so the claim is not allowable.
4. Shadrick has not met his burden of proof to show that any repairs he caused to be done to the Vehicle were related to the title brand of the Vehicle. Shadrick therefore has not established that the Dealer's violation caused him an actual loss in the form of the repairs claimed.
5. The Division of Hearings and Appeals has authority to issue the following order.

**ORDER**

The claim filed by Shawn Shadrick is DENIED.

Dated at Milwaukee, Wisconsin on September \_\_\_, 2001.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
819 N. 6th Street, Room 92  
Milwaukee, Wisconsin 53203-1685  
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By: \_\_\_\_\_

William S. Coleman, Jr.  
Administrative Law Judge

## **NOTICE**

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.